UNITED
NATIONS

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General Assembly Security Council

Distr.
GENERAL

A/46/886
S/23641
25 February 1992
ENGLISH
ORIGINAL: ARABIC/ENGLISH

GENERAL ASSEMBLY
Forty-sixth session
Agenda item 125
MEASURES TO PREVENT INTERNATIONAL TERRORISM WHICH ENDANGERS OR TAKES INNOCENT HUMAN LIVES OR JEOPARDIZES FUNDAMENTAL FREEDOMS AND STUDY OF THE UNDERLYING CAUSES OF THOSE FORMS OF TERRORISM AND ACTS OF VIOLENCE WHICH LIE IN MISERY, FRUSTRATION, GRIEVANCE AND DESPAIR AND WHICH CAUSE SOME PEOPLE TO SACRIFICE HUMAN LIVES, INCLUDING THEIR OWN, IN AN ATTEMPT TO EFFECT RADICAL CHANGES:
(a) REPORT OF THE SECRETARY-GENERAL;
(b) CONVENING, UNDER THE AUSPICES OF THE UNITED NATIONS, OF AN INTERNATIONAL CONFERENCE TO DEFINE TERRORISM AND TO DIFFERENTIATE IT FROM THE STRUGGLE OF PEOPLES FOR NATIONAL LIBERATION

SECURITY COUNCIL
Forty-seventh year

Letter dated 25 February 1992 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith the text of a memorandum from the International Progress Organization, an organization in consultative status with the United Nations, concerning the dispute between the Libyan Arab Jamahiriya and members of the Security Council over the inquiries into the bombing of civilian airliners (see annex).

I should be grateful if you would have the text of the present letter and its annex circulated as a document of the General Assembly, under agenda item 125, and of the Security Council.

(Signed) Ali Ahmed ELHOUDEIRI
Permanent Representative

ANNEX

Memorandum dated 6 February 1992 from the President of the International Progress Organization addressed to the President of the Security Council of the United Nations concerning the dispute between Libya and members of the Security Council over the inquiries into the bombings of civilian airliners

The International Progress Organization presents its compliments to the President of the Security Council of the United Nations and, while welcoming any initiative aimed at combating international terrorism, submits the following memorandum on legal aspects of the Council resolution adopted on 21 January 1992.

1. Security Council resolution 731 (1992) is not in conformity with the requirements of Article 33 of the Charter of the United Nations regarding the peaceful settlement of disputes between Member States. Article 33 requires that the parties "shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement ...".

2. The Security Council - acting under Chapter VI of the Charter of the United Nations, as required - did not pay proper attention to the specifications of Article 36, paragraph 3, according to which the Council, when making recommendations, should consider "that legal disputes should as a general rule be referred by the parties to the International Court of Justice".

3. The procedure in adopting the above-mentioned resolution was not in conformity with the stipulation of Article 27, paragraph 3, of the Charter according to which, in decisions under Chapter VI, a party to a dispute shall abstain from voting. This obligation in the present dispute clearly exists for the United States of America, the United Kingdom of Great Britain and Northern Ireland and France.

4. In its letter of 18 January 1992, Libya, in regard to arbitration of the present dispute, has formally invoked article 14 of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The Convention establishes and controls the legal obligations of Contracting Parties, including the United States, the United Kingdom, France and Libya, in connection with legal proceedings related to the destruction of PanAm flight 103 and UTA flight 772. Since all the members of the Security Council are parties to the Convention, they therefore have an obligation to do nothing that would interfere with or prejudice the arbitration process. As international relations within the United Nations framework are based on the rule of law, the countries concerned should fully apply the procedures of the Montreal Convention as the chosen way for addressing this international dispute.

5. Libya, the United Kingdom and the United States have also ratified article 14 of the Montreal Convention according to which the present dispute may be referred to the International Court of Justice by any of the parties if, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of arbitration. The United States and the United Kingdom are therefore obligated to proceed in accordance with the arbitration provisions of article 14. To date they failed to do so, thereby frustrating the treaty and the method provided by international law through the Montreal Convention for addressing acts of terrorism against international civil aviation. If they reject arbitration formally or de facto in violation of the treaty, then the matter should be submitted to the International Court of Justice as the legal and specific means of determining obligations of parties under the Convention.

6. Libya has performed its duties under the Montreal Convention, including its obligation under article 5, paragraph 1. Libya immediately exercised its jurisdiction over the two alleged offenders, it notified the other parties that the suspects were in custody and that immediate steps had been taken to institute a preliminary inquiry.

7. All parties required were notified of the initiation of the preliminary inquiry and requested to cooperate with the Libyan judicial authorities. These authorities made the same request in official communications to the Attorney-General of the United States of America, the Foreman of the Grand Jury in the District of Columbia in the United States, and the French examining magistrate. As of this date, although obligated under the Montreal Convention, all of the requested Governments and officials have failed to respond. Until their evidence can be assessed, Libya is unable to complete the analysis that the Montreal Convention requires. Therefore, the United States and the United Kingdom are frustrating the treaty. Under the circumstances, the insistence by Security Council members on the extradition of the two suspects is in violation of article 7 of the Convention.

8. For the Security Council to deal with the matter to which Council resolution 731 (1992) refers is unprecedented in the United Nations history. The question of extradition in relation to tragic incidents that are several years old is essentially legal in nature. For the Council to endeavour to adjudicate such matters is beyond its power and its capacity. Such matters must be dealt with in accordance with the relevant international legal instruments that apply, and not in a highly politicized context. The Montreal Convention has for 20 years governed unlawful acts against the safety of international civil aviation. The International Court of Justice has jurisdiction to determine violations of the Convention. The Security Council should take no action which would interfere with legal procedures and/or which could aggravate the present dispute among Member States.

The International Progress Organization expresses the hope that the Security Council will take no action that could be seen as justifying aggressive acts by Member States in connection with the present dispute.

Having taken note of the resolutions adopted by the League of Arab States and by the Organization of the Islamic Conference, we appeal to the Security Council not to take any measure which would jeopardize an independent legal investigation of the case, and to support a policy of constructive dialogue to contain the present crisis. Only this would be in conformity with the requirements of reviving the Charter of the United Nations as an instrument to establish a new world order of democracy, peace and justice for all nations, large and small.

We kindly ask you to add this message - in conformity with paragraph (a) of the appendix of the provisional rules of procedure of the Security Council - on the list of communications to be circulated to all representatives on the Council.

(Signed) Dr. Hans KOECHLER
President